



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER
GOVERNOR

Certified Mail: 7003 1680 0000 6167 5462

July 9, 2008

Mr. Wesley Nicks, Director
Nevada County Environmental Health
950 Maidu Avenue
Nevada City, California 95959

Dear Mr. Nicks:

The California Environmental Protection Agency (Cal/EPA), Office of Emergency Services, and the State Water Resources Control Board conducted a program evaluation of the Nevada County Environmental Health Certified Unified Program Agency (CUPA) on Wednesday, June 11, 2008 and Thursday, June 12, 2008. The evaluation was comprised of an in-office program review, and field oversight inspections, by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that Nevada County Environmental Health's program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Status Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Status Reports to Kareem Taylor every 90 days after the evaluation date. The first deficiency progress report is due on September 10, 2008.

Cal/EPA also noted during this evaluation that Nevada County Environmental Health has worked to bring about a number of local program innovations, including the creation of a Multi Agency Coordination Group (MAC) of neighboring environmental health organizations to respond to large hazardous materials and disaster events. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program web site to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at jbohon@calepa.ca.gov.

Sincerely,

[Original Signed by Don Johnson]

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosure

cc/Sent via email:

Mr. David Huff, CUPA Manager
Nevada County Environmental Health
950 Maidu Avenue
Nevada City, California 95959

Mr. Terry Snyder
State Water Resources Control Board
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Mr. Fred Mehr
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cc/Sent via Email:

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Ms. Asha Arora
Department of Toxic Substances Control
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Mr. Ben Ho
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Enclosure



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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS

CUPA: Nevada County Environmental Health

Evaluation Date: June 11 – 12, 2008

EVALUATION TEAM

Cal/EPA: Kareem Taylor

SWRCB: Terry Snyder

OES: Fred Mehr

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Kareem Taylor at (916) 327-9557.

| | <u>Deficiency</u> | <u>Preliminary Corrective Action</u> |
|----------|---|---|
| 1 | <p>The CUPA does not have the following Unified Program (UP) administrative procedures:</p> <ul style="list-style-type: none">• Public participation procedures• Records maintenance procedures that include the identification of the records maintained, minimum retention times, and archive procedures.• Procedures for responding to requests for information from government agencies with a legal right to access the information, or from emergency responders, including methods to prevent the release of confidential and trade secret information.• Procedures for forwarding the HMRRP information in accordance with Health and Safety Code sections 25503.5(d) and 25509.2(a)(3).• Financial management procedures <p>CCR, Title 27, Section 15180 (e) (Cal/EPA)</p> | <p>By September 12, 2008, the CUPA will complete its administrative procedures.</p> <p>The CUPA will submit a copy to Cal/EPA with its first progress report.</p> |

Certified Unified Program Agency (CUPA)
Evaluation Summary of Findings

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| 2 | <p>The CUPA does not have an Inspection and Enforcement (I and E) plan. The I and E plan must contain the following elements:</p> <ul style="list-style-type: none"> • Provisions for administering all program elements. • A schedule of the inspection frequencies to be conducted that shall, at a minimum, meet the inspection frequencies mandated in statutes. • Enforcement notification procedures that ensure appropriate confidentiality; and coordination and timely notification of appropriate prosecuting agency (ies). • Identification of all available enforcement options (i.e. red tag, civil, criminal, AEO). • Uniform and coordinated application of enforcement standards. • Identification of penalties and enforcement actions that are consistent and predictable for similar violations and no less stringent than state statute and regulations. • A graduated series of enforcement actions that may be taken by the UPAs, based on the severity of the violation. • Provisions for multi-media enforcement. • A description of how the CUPA minimizes or eliminates duplication, inconsistencies, and lack of coordination within the inspection and enforcement program. • Provisions for coordinating enforcement efforts between the CUPA and its participating agencies. <p>The CUPA has guidance documents on file for the I and E plan, violation classification, and the AEO process.</p> <p>CCR, Title 27, Section 15200 (a) (Cal/EPA)</p> | <p>By December 12, 2008, the CUPA will complete its I and E plan that include all the required elements. Please refer to the I and E plan guidance that can be found on the Cal/EPA web site.</p> <p>The CUPA will submit a copy to Cal/EPA with its first progress report.</p> |
| 3 | <p>The CUPA does not have a written plan to resolve fee disputes that arise between a regulated business and the CUPA, or between a regulated business and the state regarding the state surcharge.</p> <p>CCR, Title 27, Section 15210 (k) (Cal/EPA)</p> | <p>By September 12, 2008, the CUPA will complete its fee dispute resolution procedure.</p> <p>The CUPA will submit a copy to Cal/EPA with its first progress report.</p> |
| 4 | <p>The CUPA did not have a narrative self audit of its performance in fiscal year (FY) 06/07.</p> <p>CCR, Title 27, Section 15280 (Cal/EPA)</p> | <p>By September 30, 2008, the CUPA will conduct a self audit of its performance for FY 07/08. The CUPA will complete a self audit by September 30 of each year.</p> <p>Submit the CUPA's FY 07/08 narrative self audit to Cal/EPA by September 30, 2008.</p> |

Certified Unified Program Agency (CUPA)
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| 5 | <p>The CUPA did not complete its FY 05/06 Annual Summary reports.</p> <p>CCR, Title 27, Section 15290 (Cal/EPA)</p> | <p>By September 30, 2008, the CUPA will complete its FY 07/08 Annual Summary reports.</p> <p>The CUPA will submit a copy to Cal/EPA with its first progress report.</p> |
| 6 | <p>The CUPA is not ensuring that businesses are submitting their hazardous materials inventory or a certification statement to the CUPA on or before March 1 of each year.</p> <p>During the file review, 70% of the files reviewed lacked a current inventory or certification.</p> <p>HSC, Chapter 6.95, Section 25505 (c) (OES)</p> | <p>By September 12, 2008, the CUPA shall submit an action plan outlining how the CUPA will request inventory or certification statements from the businesses.</p> |
| 7 | <p>The CUPA has not performed any annual CalARP performance audits.</p> <p>CCR, Title 19, Section 2780.5 (OES)</p> | <p>By September 12, 2008, the CUPA shall perform an annual CalARP performance audit. At the CUPA's option, this information may be included with the annual Title 27 self audit.</p> |
| 8 | <p>The CUPA is not forwarding the business plan information collected to other local agencies in a format easily interpreted by those agencies with shared responsibilities for protection of the public health and safety and the environment. Per a discussion with Penn Valley Fire, information has not been forwarded consistently and is not in a format easily interpreted.</p> <p>HSC, Chapter 6.95, Section 25509.2 (a)(3) (OES)</p> | <p>By September 12, 2008, the CUPA shall submit an action plan outlining how the CUPA will forward data collected in a format easily interpreted by agencies with shared responsibilities for protection of the public health and safety.</p> |
| 9 | <p>The CUPA is not implementing and enforcing the requirements of the business plan program for all handlers subject to the program. Specifically, the CUPA is neither regulating nor properly exempting agricultural handlers subject to the business plan program.</p> <p>HSC, Chapter 6.95, Section 25503.5 (a) (OES)</p> | <p>By September 12, 2008 the CUPA shall submit an action plan outlining how the CUPA will inspect all of the regulated businesses including agricultural handlers once every three years.</p> |
| 10 | <p>The CUPA is exempting carbon dioxide without following the correct process for allowing this exemption.</p> <p>HSC, Chapter 6.95, Section 25503.5 (c) (4) (OES)</p> | <p>By September 12, 2008, the CUPA shall submit an action plan outlining how the CUPA will exempt carbon dioxide correctly or start regulating the hazardous material.</p> |
| 11 | <p>The CUPA does not have a CalARP dispute resolution.</p> <p>CCR, Title 19, Section 2780.1 (OES)</p> | <p>By September 12, 2008 the CUPA shall submit a Cal ARP dispute resolution.</p> |
| 12 | <p>The CUPA area plan has not been updated since 1993.</p> <p>HSC, Chapter 6.95, Section 25503 (d) (OES)</p> | <p>By September 12, 2008 the CUPA shall submit an action plan outlining how the CUPA will update the Area Plan.</p> |

Certified Unified Program Agency (CUPA)
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| 13 | <p>The CUPA has no procedure for disclosing confidential information to doctors, officers or government employees in connection with official duties.</p> <p>HSC, Chapter 6.95, Section 25511 (d) (OES)</p> | By September 12, 2008 the CUPA shall submit a confidential information procedure. |
| 14 | <p>The CUPA did not meet the annual inspection frequency for UST facilities during 2007. In 2007, the CUPA completed UST compliance inspections for only 76% of the regulated UST facilities. The CUPA's goal is to meet the inspection frequencies and conduct compliance inspections during annual monitoring certifications. The CUPA has met their inspection frequency in prior years and the decline in inspections this year has been due to loss of staff and reassignment of some staff time to other departmental duties. The CUPA stated that they are using a risk-based inspection process. The CUPA is inspecting facilities with the highest potential for environmental impacts and recalcitrant facilities first. This provides maximum protection for the environment yet may reduce compliance frequencies.</p> <p>HSC, Chapter 6.7, Section 25288 (a) (SWRCB)</p> | By September 30, 2009, the CUPA will conduct compliance inspections for all of its UST facilities. This should be reflected on their Annual Summary Report 3 and Semi-Annual Report 6. |
| 15 | <p>The CUPA is not reporting Significant Operational Compliance (SOC) on Report 6 in a manner consistent with federal guidelines.</p> <p>CCR, Title 23, Sections 2713 (c) (4) (SWRCB)</p> | The CUPA will report SOC as required on Semi-Annual Report 6s. |

CUPA Representative

Kareem Taylor
(Print Name)

Original Signed
(Signature)

Evaluation Team Leader

Wesley Nicks
(Print Name)

Original Signed
(Signature)

Certified Unified Program Agency (CUPA)
Evaluation Summary of Findings

PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.

1. **Observation:** The CUPA's inspection forms contain "yes/no" checkboxes so that inspectors can document owner/operator consent to inspect.

Recommendation: Cal/EPA recommends that the CUPA modify its inspection forms so that owners/operators may sign their consent for inspections. A signed consent by owners/operators will strengthen any enforcement case against violators should formal enforcement become necessary.

2. **Observation:** The CUPA's Envision Connect database does not contain inspection report information for some of the observed hardcopy inspection reports. Also, the CUPA has tablet PCs to use for inspections, however, they are not used because the tablet PCs and the Envision server are not able to connect and properly exchange information.

Recommendation: Cal/EPA recommends that the CUPA enter all inspection report information into the Envision database upon return from an inspection or upon some change in the inspection and enforcement information. The CUPA may want to contact Decade so that they can get some assistance for their tablet PC/Envision Server connection problem.

3. **Observation:** During the file review, evaluators had to search two or three different areas in order to obtain information for one facility. For example, for a business plan facility, an evaluator would need to search in one file room for inspection report, return to compliance, and correspondence documents and then search another file room for the business plan and annual certification.

Recommendation: Cal/EPA recommends that facility files be well organized (divided into sections) and stored in one location. This will make for more efficient access to information by the CUPA and others that request the information.

4. **Observation:** For FY 06/07, the CUPA collected \$312,739 in local fees that funds approximately 67% of its UP costs. The cost to implement Nevada CUPA is approximately \$468,401. The CUPA is set to increase its fees in July 2008 so that a larger percentage of its local fees can fund the program.

Recommendation: none

5. **Observation:** During the oversight inspection of Lake Wildwood Maintenance Yard on June 10, 2008, the evaluator did not verify that the emergency contact information was current with the correct facility contact.

Recommendation: The inspector needs to verify that the emergency information is correct.

6. **Observation:** At the time of the UST facility inspection, the CUPA inspector did not ask the service technician to test the UST overfill spill bucket drain valve.

Certified Unified Program Agency (CUPA)

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Recommendation: The SWRCB strongly encourages the CUPA to either add a requirement for the drain valve to be checked during the overfill spill bucket test or that other means are available at the facility to drain the spill container.

7. **Observation:** The CUPA's web site has links to the UST facility forms. The forms are not the most current version now in the updated Title 27 regulations.

Recommendation: The SWRCB recommends that the CUPA update its web site with the most current version of the UST forms available on Cal/EPA's web site. The new forms are required to be submitted with new permit applications or when a UST facility's information changes.

8. **Observation:** The UST inspection checklist generally identifies all of the elements that the inspector reviews at the site, but Significant Operational Compliance (SOC) items are not indicated on the checklist.

Recommendation: The SWRCB encourages the CUPA to improve the inspection checklist by identifying the SOC items on the checklist. This will make compliance determination easier for tracking and reporting purposes.

Certified Unified Program Agency (CUPA)
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EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. The CUPA has an active enforcement program. The main avenues for formal enforcement used by the CUPA are administrative enforcement orders (AEOs) and civil penalties. The CUPA has a good working relationship with the county District Attorney who is passionate about environmental protection in his home county. The CUPA has completed formal enforcement against several facilities with class 1 violations. These include:
 - Civil penalties assessed and collected against Durham Transportation, Inc. for \$130,000 for UST violations.
 - AEO penalties assessed and collected against Waste Management of Nevada County for 32,054.51 for hazardous waste and business plan violations.
2. The CUPA's website is very useful to the regulated community. The site has all of the Unified Program Consolidated Form and instructions for owners/operators to access remotely. There are fact sheets and information on the UP elements, including information on farm exemptions. Owners/operators may pay their single fees online for a small convenience cost. There are also many "hot topic" articles including information on mosquito abatement and Lyme disease (ticks).
3. The CUPA has a dedicated technician to investigate and research undiscovered/unregulated businesses. The discovered businesses are then evaluated to determine which unified program elements they belong to. The CUPA then begins the process of ensuring that the new businesses are in compliance.
4. The CUPA is in the process of creating a Multi Agency Coordination Group (MAC) of neighboring environmental health organizations to respond to large hazardous materials and disaster events. These agencies use a regional approach to response and combine resources to produce a more effective response team.